

## EXHIBIT D

John R. Wagner, M.D.

1                 UNITED STATES DISTRICT COURT  
2                 SOUTHERN DISTRICT OF WEST VIRGINIA  
3                 AT CHARLESTON  
4             -----:  
5         IN RE ETHICON, INC., PELVIC :  
6         REPAIR SYSTEM PRODUCTS       : MASTER FILE  
7         LIABILITY LITIGATION       : No. 2:12-MD-02327  
8         \_\_\_\_\_  
9              :  
10            :  
11            :  
12            :  
13         THIS DOCUMENT RELATES TO   : MDL 2327  
14         GENERAL DEPOSITION       : JOSEPH R. GOODWIN  
15         RE:    TVT                  : US DISTRICT JUDGE  
16             -----  
17              - - -  
18              March 13, 2017  
19              - - -  
20              Deposition of JOHN R. WAGNER, M.D.,  
21             held at Marriott Melville, 1350 Old Walt  
22             Whitman Road, Melville, New York,  
23             commencing at 9:04 a.m., on the above  
24             date, before Marie Foley, a Registered  
             Merit Reporter, Certified Realtime  
             Reporter and Notary Public.  
25              - - -  
26             GOLKOW TECHNOLOGIES, INC.  
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28             Deps@golkow.com  
29

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1 Q. Do you have any preliminary  
2 finding based upon your review so far?

3 A. My preliminary findings are  
4 based on my surgical experience that we  
5 haven't seen an anterior mesh erosion in  
6 three or four years since we started doing  
7 this approach.

8 Q. And that particular mesh that's  
9 being used that was used in those patients  
10 was what?

11 A. I don't believe it's uniform.  
12 It was Prolift for a while. We've had  
13 some Coloplast products that we've put in.  
14 I'm pretty sure that there's even some  
15 Boston Scientific Uphold meshes that we've  
16 placed.

17 Q. You know that the Prolift mesh  
18 that was used by Ethicon is not the same  
19 mesh that's used in the TVT Retropubic,  
20 correct?

21 A. The Prolift mesh has -- you're  
22 not just talking about straight Prolift.  
23 You're talking about -- I mean, not  
24 Prolift+M. You're talking straight

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1 Prolift.

2 Q. I'm talking about the

3 polypropylene Prolift mesh.

4 A. It's a different pore size, but  
5 it's the same material.

6 Q. It's made out of polypropylene,  
7 but it's lighter weight, correct?

8 MS. KABBASH: Objection to form.

9 A. It has a larger pore size, but  
10 the weight of the material is the same.

11 Q. Do you know whether the  
12 individual strands of polypropylene that  
13 are woven are the same thickness or  
14 diameter between the TVT Retropubic or  
15 Prolift?

16 A. I'm not aware of the size of the  
17 actual strands. I'm aware of the pore  
18 size.

19 Q. And the Prolift has a larger  
20 pore size, correct?

21 A. The Prolift has a larger pore  
22 size, yes, it does.

23 Q. Have you seen any studies or  
24 materials that reflect the weight of the

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1 Prolift as it relates to the TVT

2 Retropubic polypropylene mesh?

3 A. Weight would be a function of  
4 how much polypropylene you have. I mean,  
5 if you have a small piece of it, the  
6 weight of that's going to be small. If  
7 you have a large piece of it, the weight's  
8 going to be large.

9 I'm not sure I understand the  
10 question.

11 Q. Okay. We'll get back to that.

12 So, have we now -- you've also  
13 submitted some other materials for peer  
14 review that have been published in medical  
15 journals, correct?

16 A. I have.

17 Q. Why is it important to disclose  
18 any financial relationships with any  
19 manufacturers when one is publishing in  
20 peer-reviewed literature?

21 A. People want to know what  
22 potential biases somebody might have in  
23 presenting data. So the logic is to state  
24 your potential conflicts of interest at

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1 your residents, correct?

2 A. Yes.

3 Q. With regard to the instructions  
4 for use, have you ever designed any  
5 instructions for use?

6 A. No.

7 Q. Have you ever held yourself out  
8 as an expert in what should or should not  
9 be in instructions for use?

10 A. No.

11 Q. Are you familiar with what the  
12 or have you ever studied what the industry  
13 standards are with regard to what should  
14 or should not be in the instructions for  
15 use?

16 A. No, I have to say I'm not aware  
17 of the industry criteria for that.

18 Q. So you're not holding yourself  
19 out as an expert as to what should or  
20 should not be in instructions for use,  
21 correct?

22 MS. KABBASH: Objection to form.

23 A. I would hold myself out as an  
24 expert in teaching residents.

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1 Q. Of course. But that patient  
2 should be told that this is an  
3 experimental, you're the first patient,  
4 you're the fifth patient, it's not  
5 released to the general public yet,  
6 correct?

7 A. I think that's a fair statement,  
8 yes.

9 And you like to see some basic  
10 science data, animal studies, cadaver  
11 studies that back up what you do, whatever  
12 may be appropriate.

13 Q. Have you ever conducted any  
14 bench or laboratory research yourself on  
15 polypropylene mesh?

16 A. I have not.

17 Q. Have you ever tested different  
18 mesh material for the treatment of stress  
19 urinary incontinence?

20 MS. KABBASH: Objection to form.

21 A. I haven't done any formal  
22 testing. I've just used the different  
23 products and felt that some of them worked  
24 better for me.

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1     probably in a cadaver lab setting  
2     somewhere. I really don't have any  
3     experience with AMS products.

4                 Q.     And Boston Scientific slings,  
5     same thing?

6                 A.     I did not use their slings. I  
7     used their Uphold for anterior and apical  
8     support.

9                 Q.     In those times where you removed  
10    mesh from women, TVT, Prolene mesh, did  
11    you request any particular analysis of the  
12    explanted mesh?

13                A.     No.

14                Q.     Did you personally review the  
15    pathology reports for those?

16                A.     I'm sure that I did, and I'm  
17    sure that I probably sent it to pathology.

18                Q.     Did you in that request a SEM  
19    analysis?

20                A.     No.

21                Q.     Did you request any particular  
22    analysis of those explanted meshes?

23                A.     No, I did not.

24                Q.     I take it you're not a

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1 pathologist?

2 A. No.

3 Q. And don't hold yourself out to  
4 be an expert on pathology?

5 A. No.

6 Q. Same with you're not an  
7 epidemiologist?

8 A. No, I'm not an epidemiologist.

9 Q. You're not a biomedical  
10 engineer?

11 A. Not a bit.

12 Q. And you've never done a  
13 comparison study of different mesh  
14 designs?

15 A. No, I have not.

16 Q. And you don't hold yourself out  
17 to be an expert in medical device design?

18 MS. KABBASH: Objection to form.

19 A. Not in the bench work of design,  
20 but I think I have a handle on what seems  
21 to work best for me and for other  
22 physicians in the O.R. just based on  
23 experience.

24 Q. But with regard to comparison of

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1 different designs, you don't have an  
2 expertise on that?

3 A. Beyond my own surgical  
4 experience, no.

5 Q. And you agree that would be  
6 anecdotal experience, correct?

7 MS. KABBASH: Objection.

8 BY MR. AYLSTOCK:

9 Q. I mean, I guess you haven't done  
10 a study on SUI. We've established that.

11 A. No, but the problem I have with  
12 anecdotal would mean that there's a total  
13 absence of any ergonomic literature  
14 suggesting that one handle might be better  
15 than another, and I'm not sure I could say  
16 that. So I'd say that my migration to  
17 certain products over my career probably  
18 involves as much how I can handle the  
19 device as what data may be out there  
20 supporting a superior design or ergonomics  
21 that agrees with what I'm feeling.

22 Q. So it's based upon your clinical  
23 experience in treating particular  
24 patients, correct?

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1 them involved TVT mechanical-cut versus  
2 TVT laser-cut?

3 A. No.

4 Q. Are you familiar with -- well, I  
5 guess you've never actually implanted a  
6 TVT laser-cut -- TVT Retropubic laser-cut,  
7 to your knowledge, correct?

8 MS. KABBASH: Objection to form.

9 A. I actually don't know that. I  
10 consider those slings interchangeable. I  
11 know I've implanted the mechanical-cut,  
12 but as far as I'm aware, I could have  
13 easily implanted a laser-cut mesh. It  
14 would have been the same to me.

15 Q. You wouldn't know the difference  
16 if you held it?

17 A. I mean, if I really carefully  
18 pulled on it and tugged on it and tried to  
19 wreck it, I'd see the difference, but I'm  
20 not trying to pull and tug it and wreck it  
21 before I put it in. So to me they're  
22 interchangeable.

23 Q. So you don't know the  
24 biomechanical properties of each and

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1 whether they're the same or different?

2 MS. KABBASH: Objection to form.

3 A. To my mind, they're clinically  
4 the same.

5 Q. Do you know whether or not the  
6 TVT laser-cut is stiffer mesh than the TVT  
7 mechanical-cut?

8 A. Again, I come back to clinically  
9 to me, it makes no difference to me  
10 whether it's laser-cut or mechanical-cut.

11 Q. You say clinically, but you  
12 don't know as we sit here today whether  
13 you've actually ever implanted a TVT  
14 laser-cut retropubic, correct?

15 MS. KABBASH: Objection to form.

16 A. That is true. But it's not a  
17 characteristic that I would ever insist  
18 upon, and so I could have implanted  
19 multiple laser-cuts. I'd actually have to  
20 check the requisition office in our  
21 hospital and in my other hospital to see  
22 what they ordered. But I do know that I  
23 have used the mechanical-cut mesh.

24 Q. And the reason you don't know

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1           three hours, it's up.

2           THE WITNESS: He's done.

3           MS. KABBASH: Go ahead and have

4           a minute because I believe in

5           professional courtesy.

6           I've been held to a very tough

7           standard by some of your colleagues on

8           this.

9           MR. AYLSTOCK: No, I understand.

10          FURTHER EXAMINATION BY

11          MR. AYLSTOCK:

12          Q.       Your opinion 8 in your report  
13         about the IFU being properly describing  
14         the risks, is that -- are you referring to  
15         Exhibit 9 with regard to that report with  
16         regard to the risks described?

17          A.       Yes.

18          Q.       And you changed your testimony,  
19         or I guess you were asked questions about  
20         the type of mesh in your study.

21           Do you recall those questions?

22          A.       Yes.

23          Q.       And I take it you discussed the  
24         type of mesh in that study during break

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1 with counsel, correct?

2 A. I did 'cause she asked me what

3 it looked like, what was the name of it,

4 and I was --

5 Q. She was the one who suggested to

6 you that it was Prolene Gynemesh PS?

7 MS. KABBASH: I'm going to

8 object to this line of questioning,

9 but you can go ahead and answer.

10 Q. Not Prolene, correct?

11 A. Actually, I remember the

12 Gynemesh PS as being the mesh. That

13 wasn't the issue. My mistake was thinking

14 that that was the same mesh as the TVT.

15 In fact, that mesh is the same as what's

16 in the Prolift in terms of its dime --

17 pore diameter and things like that.

18 So, actually it was my error.

19 It wasn't I didn't remember what I put in.

20 It's that I was under the impression that

21 that mesh pore size more reflected the TVT

22 pore size, not the -- but instead it

23 actually reflected the Prolift pore size.

24 Q. Okay. So you didn't know that

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1 at the time we came in here?

2 MS. KABBASH: Objection.

3 A. I knew the mesh I put in. I  
4 didn't know the pore size of the -- I was  
5 incorrect in stating -- in thinking and  
6 alluding to the fact that the Gynemesh PS  
7 had the same pore size as the TVT. I was  
8 under that impression, and counsel  
9 corrected me, that it was actually the  
10 same as the Prolift pore size.

11 MR. AYLSTOCK: Thank you.

12 Thank you, Maha. I appreciate  
13 that.

14 (Deposition adjourned at 12:45 p.m.)

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